

BEFORE THE UNITED STATES SENATE

COMMITTEE ON COMMERCE,
SCIENCE AND TRANSPORTATION

SUBCOMMITTEE ON CONSUMER AFFAIRS,
FOREIGN COMMERCE AND TOURISM

STATEMENT OF DONALD M. FEHR,
EXECUTIVE DIRECTOR, MAJOR LEAGUE
BASEBALL PLAYERS ASSOCIATION

18 JUNE 2002

Mr. Chairman and Members of the Committee:

My name is Donald M. Fehr, and I am privileged to serve as the Executive Director of the Major League Baseball Players Association. The MLBPA is the exclusive collective bargaining representative of all major league baseball players. I am pleased to appear today in response to the Committee's invitation to testify.

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I appreciate the Committee's interest in and concern about recent reports of the use of illegal steroids in major league baseball which has led to this hearing. Let me be clear. The Major League Baseball Players Association neither condones nor supports the use by players, or by anyone else, of any unlawful substance - steroids or otherwise. Nor do we support or condone the unlawful use of any legal substance. I cannot put it more plainly: both the use of any illegal substance and the illegal use of any lawful substance are wrong.

As the members of the Committee may know, the MLBPA and the Major League Clubs are currently engaged in the process of negotiating new collective bargaining agreements with respect to terms and conditions of employment of Major League players. The appropriate forum in which to consider these issues is the collective bargaining process, and I am hopeful that before too much longer we will be able to reach a just, fair and effective agreement with the owners on all the issues which divide us, certainly including the ones that we are discussing today. Over the next few weeks we will be meeting with the players on every team, and I can assure the members of the Committee that these issues will receive serious and thoughtful discussion in those meetings.

I should also add that in my 25 years in this industry I have come to appreciate that successful collective bargaining is not likely to take place in public, even before a Senate

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committee. Accordingly, while I am happy to engage in a discussion of these issues, it should be clear that we are not bargaining here.

Let me also offer another note of caution. While we all agree that this issue is a very serious one, we should take care not to treat unsubstantiated media reports and rumors as if they were proven fact. I trust that each of you will agree that we must avoid even the possibility of smearing anyone. All who live in the public eye fully understand the damage that unfair accusations can inflict on an individual or group. For this reason, I will not discuss these issues with respect to any particular individual, and I urge the members of the Committee to adopt a similar approach.

I would also like to correct what may be a misimpression. If one simply were to pay attention to cursory sound bites or sensational magazine covers, one might believe that MLB and the MLBPA have no substance use/abuse program, or that, if one does exist, it makes no reference to steroids. Neither is true. The MLBPA and MLB have long worked with medical professionals to develop the current program, which is directed and administered by physicians appointed by our two organizations. It has a testing component, based upon reasonable cause to believe that a player has engaged in misconduct, or other activity affecting his ability to play. With respect to steroids, our policy is reflected in a brochure

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entitled "*Steroids and Nutritional Supplements*", distributed to all players as part of our educational program, copies of which are being provided to the Committee. Among other things, this brochure makes it clear:

- that all "AAS's" (anabolic androgenic steroids) are classified under Federal law as Schedule III drugs, requiring a doctor's prescription;
- there are serious health risks to the use of AAS's;
- that there are serious penalties for unlawful use or distribution of AAS's; and that
- AAS's "*are prohibited in baseball*".

But, as the Chairman and the members of the Committee surely understand, this is an issue not so easily disposed of as the sound bites and rhetoric might suggest. There are complex public policy issues involved. Consider just one example: substances having steroidal properties (e.g., DHEA), or that we believe to be steroids (e.g. androstenedione) are fully legal under federal law and are sold over the counter in health food and other stores

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all across the nation, without even the simple protections of a warning label or an age restriction. As we have suggested in "*Steroids and Nutritional Supplements*", it may well be time for the federal government to revisit whether such products should also be covered by Schedule III. We would welcome such a reexamination by the Congress and/or the FDA.

Another important issue which is implicated in this discussion can be summarized in a single word: privacy. We believe that any program can be successful only if stringent safeguards are in place to protect the privacy of the employees, particularly so in baseball where the lives of the players are so much in public view. We also recognize the public debate about the merits of cause based versus random testing. The MLBPA has always believed that one should not, absent compelling safety considerations, invade the privacy of someone without a substantial reason - i.e., without cause - related to that individual, and not merely to his status as an employed baseball player. We understand that the principles underlying the 4th Amendment's protection against unreasonable searches are not directly applicable to the private employment setting; nevertheless, such principles should not, we submit, be put aside lightly.

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Finally, let me address a question that is no doubt on the mind of the Chairman, Senator McCain, and the other members of the Committee, who have for so long been supporters of amateur and professional sports in this country: what message do we send to the kids who are playing ball and may be dreaming of a career in the big leagues? Frankly, it is the same message we send to today's players: Play this great game to the best of your ability, and do so under the rules. Do not jeopardize your health. Do not use illegal drugs. And don't take any substance - even if lawful - except on the advice and recommendation of a knowledgeable physician.
